

1 ROHIT SINGLA (#213057)  
MUNGER, TOLLES & OLSON LLP  
2 560 Mission Street  
San Francisco, CA 94105  
3 Telephone: (415) 512-4000  
Facsimile: (415) 512-4077  
4 Email: rohit.singla@mto.com

5 IAN J. MILLER (#257429)  
MUNGER, TOLLES & OLSON LLP  
6 355 S. Grand Ave., 35th Fl.  
Los Angeles, CA 90071-1560  
7 Telephone: (213) 683-9100  
Facsimile: (213) 687-3702  
8 Email: ian.miller@mto.com

9 Attorneys for Plaintiffs  
ABBOTT DIABETES CARE INC. AND ABBOTT  
10 LABORATORIES,

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN JOSE DIVISION

14  
15 ABBOTT DIABETES CARE INC. and  
ABBOTT LABORATORIES,,

16 Plaintiffs,

17 vs.

18 AGAMATRIX, INC.,

19 Defendant.  
20

CASE NO. C 06-07268-JF

**JOINT CASE MANAGEMENT  
STATEMENT, REVISED PROPOSED  
SCHEDULE AND [PROPOSED] ORDER**

1 This case involves U.S. Patent Nos. 6,071,391, 6,156,173, 6,503,381, 6,893,545,  
2 6,143,164, 6,338,790 and 5,820,551 (the “Abbott Patents”). All seven patents are directed to  
3 blood glucose monitors and glucose monitoring test strips. The ‘164 patent and the ‘551 patent  
4 were also the subject of litigation in the Northern District of California in *Abbott Diabetes Care,*  
5 *Inc. et al. v. Roche Diagnostics Corp, et al.*, Case No. 3:05-CV-03117 WHA and *TheraSense,*  
6 *Inc. and Abbott Laboratories v. Becton Dickinson and Co. and related cases*, Case Nos. C04-  
7 2123 WHA, C04-3327 WHA, C04-3732 WHA. A patent in the same patent family as the ‘790  
8 patent, U.S. Patent No. 6,592,745, was also at issue in these cases. These cases proceeded to  
9 judgment, and on October 2, 2008, this Court granted the parties’ request to stay this matter  
10 pending the outcome of appeals.  
11

12 Earlier this year, a panel of the Federal Circuit affirmed the invalidity and  
13 unenforceability of the ‘551 patent. In light of that decision, Abbott is no longer pursuing the  
14 ‘551 patent in this case. (On April 26, 2010, the Federal Circuit granted Abbott’s petition for  
15 rehearing certain issues related to the unenforceability of the ‘551 patent en banc. *Therasense,*  
16 *Inc. v. Becton, Dickinson and Co.*, 2010 WL 1655391 (Fed. Cir. 2010). The parties do not  
17 expect, however, that anything in the *en banc* process will affect the invalidity judgment with  
18 respect to the ‘551 patent.) The parties request the Court lift the stay with respect to the  
19 remaining six Abbott Patents.  
20  
21

22 At the time this case was stayed, the patents-in-suit were on two slightly different  
23 tracks. U.S. Patent Nos. 6,071,391, 6,156,173, 6,503,381 and 6,893,545 were the subject of  
24 Abbott’s original complaint. A Joint Claim Construction and Pre-Hearing Statement was filed for  
25 these patents on July 3, 2007. The complaint was later amended to add US Patent Nos.  
26 6,143,164, 6,338,790 and 5,820,551, and on October 17, 2007 the Court approved a schedule  
27 wherein parties continued exchanges regarding these newly-asserted patents as set forth in the  
28

Patent Local Rules, while delaying the filing of Claim Construction briefs on the original four patents. Claim Construction briefing and the subsequent hearing would then encompass all of the patents-in-suit.

The parties have agreed on a schedule to govern this case through trial, set forth below. The parties believe this schedule promotes an expeditious resolution to this case while conserving judicial resources. The parties have no objection to the Court's taking the Case Management Conference off calendar should the Revised Proposed Schedule be deemed acceptable.

#### **Joint Proposed Schedule**

<b>Date</b>	<b>Event</b>
June 21, 2010	Deadline for parties to exchange "Proposed Terms and Claim Elements for Construction" as required by Patent Local Rule 4-1 for the newly-asserted patents. Parties shall meet and confer to narrow or resolve any differences in the lists and facilitate the preparation of "Joint Claim Construction and Prehearing Statement."
July 2, 2010	Deadline for parties to exchange "Preliminary Claim Constructions and Extrinsic Evidence" as required by Patent Local Rule 4-2 for the newly-asserted patents.
August 16, 2010	Deadline for parties to file "Joint Claim Construction and Pre-Hearing Statement" for the newly-asserted patents as required by Patent Local Rule 4-3.
August 16, 2010	Parties' Initial Expert Disclosures and Reports on Claim Construction
September 1, 2010	Parties' Responsive Expert Reports on Claim Construction
September 13, 2010	Deadline for completion of discovery related to Claim Construction as required by Patent Local Rule 4-4 for all patents-in-suit.
October 1, 2010	Deadline for Plaintiffs to file opening brief on claim construction for all patents-in-suit (Patent

1		L.R. 4-5(a)).
2	October 22, 2010	Deadline for Defendant to file responsive brief on claim construction for all patents-in-suit (Patent L.R. 4-5(b)).
3		
4	October 29, 2010	Deadline for Plaintiffs to file reply brief on claim construction for all patents-in-suit.
5	TBD by Court if Needed	Claim Construction pre-hearing conference (Patent L.R. 4-6).
6		
7	November 12, 2010 or TBD by Court	Claim Construction hearing on all patents-in-suit.
8	March 7, 2011	Close of fact discovery
9	March 21, 2011	Initial expert reports
10	April 18, 2011	Rebuttal expert reports
11	May 13, 2011	Close of expert discovery
12	June 3, 2011	Dispositive motion filing deadline
13	August 5, 2011	Final Pretrial Conference
14	September 9, 2011 or as soon thereafter as determined by the Court	Trial

15  
16 DATED: May 20, 2010

MUNGER, TOLLES & OLSON, LLP  
ROHIT SINGLA  
IAN MILLER

18 By: /s/ Rohit Singla  
ROHIT SINGLA

19 Attorneys for Plaintiffs  
20 ABBOTT DIABETES CARE INC.  
21 and ABBOTT LABORATORIES

22 DATED: May 20, 2010

GOODWIN PROCTER LLP  
J. ANTHONY DOWNS  
ROLAND SCHWILLINSKI

24 By: /s/ Roland Schwillinski  
25 ROLAND SCHWILLINSKI

26 Attorneys for Defendant  
27 AGAMATRIX, INC.  
28

**ORDER LIFTING STAY AND ADOPTING REVISED PROPOSED SCHEDULE**

The Court finds cause to lift the stay with respect to U.S. Patent Nos. 6,071,391, 6,156,173, 6,503,381, 6,893,545, 6,143,164, and 6,338,790, and good cause appearing, adopts the parties' Revised Proposed Schedule.

Dated: \_\_\_\_\_

\_\_\_\_\_  
JEREMY FOGEL  
United States District Judge